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JAMES H. McKENNEY,
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Supreme Court of the United States

OCTOBER TERM, 1905

No. 229

GEORGE F. ALBRIGHT, APPELLANT,

vs.

THE TERRITORY OF NEW MEXICO, *EX REL.*,
JESUS M. SANDOVAL, APPELLEE.

APPEAL FROM THE SUPREME COURT OF
THE TERRITORY OF NEW MEXICO.

Motion to Dismiss and Brief of Appellee Thereon

NEILL B. FIELD,
Counsel for Appellee.

Supreme Court of the United States

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THE TERRITORY OF NEW MEXICO *EX REL.*,
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MOTION TO DISMISS

Comes now the appellee, by Neill B. Field, his attorney, and moves the court to dismiss the appeal in the

damages, however flagrant may have been his usurpation. The possibilities of this result are more than remote when it is recalled that many terms of office are only one or two years in duration, and that in the ordinary administration of justice, it often takes fully that length of time to secure from the court of final resort a decision upon the merits of the controversy. We do not believe it to be the law that a litigant can thus speculate upon the chances of a trial of his case and by delaying the hearing of the cause a sufficient length of time to accomplish the result which could never be obtained by a trial upon the merits.'

(*Transcript p.* 59).

But I submit that the language of this court, in the case of *Kimball v. Kimball,* 174 *U. S.* 163, is a complete answer to that position:

> "The question whether the petitioner was or was not the widow of the deceased, whatever importance it may have in the determination of other controversies in which she may be interested, is a moot question in this case in the present condition of things; for, however that question should be decided, the petitioner cannot obtain letters of administration, and the letters of administration granted to other persons have been revoked."

There being nothing upon which the judgment of this court can operate, the appeal must, in accordance with the established practice of this court, be dismissed.

California v. San Pablo R. R., 149 *U. S.* 314.
Mills v. Green, 159 *U. S.* 651.

Respectfully submitted,
NEILL B. FIELD,
Counsel for Appellee.

To George F. Albright, appellant in the above entitled cause, and to W. B. Childers, his attorney:

You are hereby notified that the undersigned will on Monday, the 27th day of November, 1905, move the Honorable Supreme Court of the United States to dismiss the appeal in the above-entitled cause, for the reason stated in the foregoing motion and argument, which will be submitted for the consideration of the court.

NEILL B. FIELD,
Attorney for Appellee.

Service of the foregoing notice was accepted at Albuquerque, New Mexico, this 24th day of October, 1905.

W. B. CHILDERS,
Attorney for Appellant.